No. 91-712

In the Supreme Court
OF THE
United States

Supreme Court, U.S.
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OCTOBER TERM, 1992

UNITED STATES OF AMERICA,
Petitioner,
vs.
HUMBERTO ALVAREZ-MACHAIN,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF AMICUS CURIAE OF AMERICAS WATCH IN SUPPORT OF RESPONDENT

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BRIEF AMICUS CURIAE OF AMERICAS WATCH IN SUPPORT OF RESPONDENT

Pursuant to Rule 36 of the Rules of this Court, Americas Watch respectfully submits this brief as *amicus curiae* in support of Respondent Dr. Humberto Alvarez-Machain.

The Petitioner and Respondent have consented to the submission of this brief, and their written consents have been lodged with the Clerk of the Court.

INTEREST OF AMICUS CURIAE

Americas Watch is a non-partisan, non-governmental human rights organization that investigates, documents and publicizes systematic violations of human rights in

the Americas, including those committed by the governments of Mexico and the United States. Americas Watch reports on torture, disappearances, political killings, imprisonment or exile for non-violent speech or association, press censorship, and other violations of civil and political rights. Americas Watch is a division of Human Rights Watch, which also includes Asia Watch, Africa Watch, Middle East Watch and Helsinki Watch.

Although it is not a law firm, Americas Watch has lawyers on its staff and has been counsel in lawsuits before both United States courts and the Inter-American Court and Commission on Human Rights that have raised international law questions within the scope of its mandate.

This case presents a matter of first impression: Do United States courts have jurisdiction to prosecute an individual who has been forcibly abducted from another nation by United States agents, physically and psychologically mistreated, and brought to this country in violation of an extradition treaty and international law, when the other nation formally protests and requests the person's return. At the heart of this case is the need to preserve a well-established international system for protecting individual rights. Protection of those rights is one of the bases for the principle of territorial sovereignty. The issue is not solely that one state has violated the territorial sovereignty of another, but that the abducted individual is facing prosecution without the protection of his state, which has a duty to safeguard the individual rights of its citizens and those located within its territory. To circumvent the sovereign state — in this case by bypassing an extradition treaty — without showing that the state inadequately fulfilled its duty to prosecute criminal offenders on its territory, is to strike at the principle

international mechanism for preventing murder, torture, kidnapping, arbitrary arrest and other abuses during the apprehension and prosecution of criminal suspects. Because of the challenge posed by United States agents in this case to this first line of defense for the rights of an individual facing prosecution, Americas Watch has a vital interest in this case.

In addition, through its work in connection with the dramatic transitions from dictatorial regimes to democracies that have occurred in the Western Hemisphere in the past decade, Americas Watch has developed expertise regarding appropriate remedies for violations of international law. In this brief, Americas Watch argues that under international law, the appropriate remedy for the United States government's illegal actions in this case is Respondent's return to Mexico.

STATEMENT OF THE CASE

Respondent Dr. Humberto Alvarez-Machain, a Mexican national, is under indictment in the United States on charges related to the torture and murder in Mexico of United States Drug Enforcement Administration Special Agent Enrique Camarena Salazar. In April 1990, Alvarez-Machain was forcibly abducted from his medical office in Guadalajara, Mexico by five or six armed men who he took to be Mexican police officers, *United States v. Caro-Quintero*, 745 F. Supp. 599, 603 (C.D. Cal. 1990), but who, it subsequently was determined, were paid agents of the United States government. *Id.* For more than 20 hours, Alvarez-Machain was held incommunicado and physically and psychologically abused.[1] He was involuntarily trans-

[1]The abduction process was very similar to the beginning of the process by which hundreds of Mexicans disappeared in the 1970s and

ported to the United States, where he was arrested by federal officials. *Id.*

The abduction, which received intense and continuous press attention in Mexico, outraged the people of Mexico. The Mexican Senate passed a resolution condemning the kidnapping and the Mexican government filed a series of diplomatic notes with the United States government protesting the abduction and demanding Alvarez-Machain's return. (J.A. 33, 35, 36). The Mexican government filed criminal charges against several Mexican nationals who allegedly participated in the kidnapping; it also formally requested the extradition of U.S. Drug Enforcement Agents Hector Berrellez and Antonio Garate Bustamante to face charges relating to Alvarez-Machain's abduction. 745 F. Supp. at 604. *See also* Brief for the United Mexican States as *Amicus Curiae* in Support of Granting Review at 9.

At the time of the kidnapping an extradition treaty between the United States and Mexico was in effect.[2] Under Article 9 of that treaty, the contracting parties are not required to deliver their nationals to the country requesting extradition; but if they refuse to extradite them, they are bound to submit the case to their own country's competent authorities for prosecution.

The United States government never formally requested Alvarez-Machain's extradition under the treaty. Rather, the government argues that to do so would be futile since Mexico does not extradite its citizens. Open-

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early 1980s; isolated instances of disappearance in Mexico continue to this day. Americas Watch, *Human Rights in Mexico: A Policy of Impunity* 35 (1990).

[2]1980 Extradition Treaty between the United States and Mexico, May 4, 1978, 31 U.S.T. 5039, T.I.A.S. No. 5200.

ing Brief of Petitioner at 21. Had the United States invoked the extradition treaty, Mexico would have been required to prosecute Respondent for the alleged acts that occurred in Mexico. The United States has made no showing that Mexico would have been unwilling or unable to fulfill its obligation under the extradition treaty to prosecute Respondent in Mexico, had a formal extradition request been made. The Mexican government has consistently stated that it will honor its obligations under the treaty with respect to Respondent. (J.A. 70-71).

SUMMARY OF ARGUMENT

The government's abduction of Alvarez-Machain undermines the sovereignty-based system for protecting individual rights because it was done in a way that precluded Mexico from exercising its duty to protect the rights of individuals facing prosecution.[3] A long line of international cases show that when a government abducts a person from the territory of another, without that state's consent, the remedy is repatriation of the abducted individual.

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[3]Arguments relating to the United States government's breach of the 1980 Extradition Treaty between the United States and Mexico and the correct remedy for that breach are amply addressed in the brief of Respondent and those of other *amici*. For that reason Americas Watch does not raise those issues in this brief.

ARGUMENT

I.

The Abduction Of Respondent From Mexico By United States Government Agents Violated International Law And Interfered With Mexico's Ability To Fulfill Its International Law Duty To Protect The Rights Of Its Citizens.

This case strikes at the heart of a state's sovereign duty to protect the individual rights of its citizens and those located within its territory.[4] Under international law, as embodied in numerous multilateral treaties to which Mexico is a party, each state has a duty to ensure that its criminal laws are enforced fairly, with full respect for due process, and in a manner that avoids possible violation of the right to physical integrity through such practices as kidnapping or physical or psychological abuse.[5] In recognition that this duty lies in the first instance with the state where the criminal suspect is found, international law prohibits any exercise of law enforcement by one state in the territory of another without the latter state's

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[4]*See* Restatement (Third) Foreign Relations Law of the United States ("Restatement (Third)") § 701; J. Sweeney, C. Oliver & N. Leech, *Cases and Materials on the International Legal System* 488 (1988).

[5]Universal Declaration of Human Rights, U.N. Doc. A/801 (1948); American Convention on Human Rights, Dept. of State Bull. 28 (July 4, 1977), adopted by the OAS on 22 November 1969 (entered into force 1 June 1977); International Covenant on Civil and Political Rights, G.A. Res. 2200 A (XXI) of 16 December 1966 (entered into force 23 March 1976). Mexico has ratified the American Convention on Human Rights and the International Covenant on Civil and Political Rights.

consent.[6] When agents from one state invade the territory of another to abduct a citizen of that state without the latter's express or implied consent, they interfere with the state's ability to protect the rights of its citizens.

One way states preserve their ability to protect the rights of those on their territories who are facing prosecution is by entering into extradition treaties. Bilateral extradition treaties inure to the benefit of individuals within the signatory nations' territory because, through the formal diplomatic process of requesting extradition and considering another state's extradition request, they provide a framework for a state to ensure that a person's rights are protected even when that person faces prosecution by a foreign sovereign.[7]

The facts in this case illustrate what happens when the formal extradition process is circumvented. Here a Mexican national was sought by United States authorities in

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[6]In general, international law prohibits states from performing acts of sovereignty on the territory of another state. 1 Oppenheim, *International Law 295* (8th ed. H. Lauterpacht 1955). "It is universally recognized, as a corollary of state sovereignty, that officials of one state may not exercise their functions in the territory of another state without the latter's consent. Thus, while a state may take certain measures of nonjudicial enforcement against a person in another state . . . its law enforcement officers cannot arrest him in another state, and can engage in criminal investigations in that state only with that state's consent." Restatement (Third), § 432(2) (1987). *See also* 1 McNair, *International Law Opinions* 76-77 (1956).

[7]It is for this reason that states do not conclude extradition treaties with states in whose criminal justice system they lack confidence. Restatement (Third), at 558. For example, the United States has no extradition treaty with Libya, Syria, Lebanon, Jordan, Yeman, Tunisia, Algeria, North Korea, the Peoples Republic of China, Vietnam, Afghanistan, Cambodia, Kuwait, Morocco, Ethiopia, Somalia, Sudan, and Mozambique.

connection with the torture and murder of a United States government agent on Mexican soil. Instead of invoking the extradition treaty, United States agents took the law into their own hands and abducted the wanted man. In transporting him to the United States they committed serious abuses — physical and psychological mistreatment and kidnapping — of the sort Mexico has a duty to prevent.

Mexico justifiably protested this assault on its duty to ensure both that crimes within its territory are prosecuted and that the manner of prosecution respected Alvarez-Machain's basic rights. As a result of the acts of the United States, Mexico was rendered powerless to protect one of its citizens from being held incommunicado, and physically and psychologically abused, let alone to ensure that his arrest was warranted and that his prosecution for the crimes of which he is accused should best proceed in the United States as opposed to Mexico. Indeed, although the United States made clear its intent to track down and prosecute all those connected with the torture and murder of Camarena, the crimes occurred on Mexican soil. Mexico had previously prosecuted and convicted more than two dozen persons for the crimes against Camarena.[8]

Had the extradition treaty been invoked, the Mexican government would have been in a position to exercise its sovereign prerogative to determine how best to ensure that Alvarez-Machain's due process rights were respected, while prosecution proceeded. It would also have been able to prevent Alvarez-Machain's mistreatment and kidnapping. Instead, incensed by the fact that individuals in Mexico had tortured and murdered a

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[8]Weinstein, Henry & Wilkinson, Tracy, "Jurors Return Camarena Conviction," *Los Angeles Times*, Aug. 7, 1990.

United States law enforcement agent acting in his official capacity, the United States government adopted a no-holds-barred approach to obtaining physical custody of those it believed to be responsible. The steps taken to kidnap Respondent show the measures it considered acceptable to achieve that goal.

The extradition treaty in effect between the two countries provided the United States with an alternative to kidnapping Alvarez-Machain and transporting him to the United States: Under Article 9 of the treaty, if Mexico refuses to extradite one of its nationals whose extradition is requested by the United States, it *must* prosecute that person in Mexico. The United States has never asserted that had it requested Alvarez-Machain's extradition and Mexico had chosen to prosecute rather than extradite him, he would not have received a fair trial or, if convicted, just punishment in Mexico. Under these circumstances, no valid United States interest justified its assault on Mexico's system of justice.

During the more than 125 years from the time the United States and Mexico signed their first bilateral extradition treaty until the abductions in connection with the Camarena case, neither government said or did anything to indicate that it had the legal right in international law to forcibly abduct a national from the territory of the other. Until now, both countries have enjoyed the assurance that because of the treaty and basic principles of customary international law, there would be no such encroachments on their sovereign territory. Indeed, were Mexico to exercise its "right" to abduct a United States citizen, little imagination would be required to envision how the government would respond. To sanction what the United States government did in this case would be to leave United States citizens without protection from their

government — other than *post facto* diplomatic efforts — should they be abducted by a foreign agent for alleged crimes committed in the United States that give another state jurisdiction over the abducted person.

II.

The Recognized International Law Remedy For The United States' Abduction Of Alvarez-Machain Is To Return Him To Mexico.

A. The works of jurists, the practice of nations, and judicial decisions enforcing customary international law support the position that repatriation is the required remedy.

Under international law,[9] "a state that has violated a legal obligation to another state is required to terminate the violation and, ordinarily, to make reparation, including in appropriate circumstances restitution or compensation for loss or injury." Restatement (Third) § 901. The Permanent Court of International Justice established the basic principles governing reparation:

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[9]The sources of international law are found "by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing the law." *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 160-61 (1820). *See also* Statute of the International Court of Justice, art. 38, June 26, 1945, 59 Stat. 1055 (1945), T.S. No. 993. The general practice of states "should be recognized as prima facie evidence" of a rule of international law. *North Sea Continental Shelf Cases*, 1969 I.C.J. 4 (1969); Restatement (Third) § 102 ("Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation"). The "general assent of civilized nations," therefore, can ripen into "a settled rule of international law." *The Paquete Habana*, 175 U.S. 677, 694 (1900).

> The essential principle contained in the actual notion of an illegal act — a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals — is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear.

Chorzow Factory (Indemnity) Case (Ger. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17, at 47.

Restitution in kind is designed to re-establish the circumstances that would have existed had the wrongful act not taken place: termination of the violation and return of the property or person wrongfully seized. The Comment to Restatement (Third) § 901 emphasizes that the purpose of the remedy of reparation is to restore "the *status quo ante*."

Likewise, the proper international law remedy for Respondent's illegal abduction is his return to Mexico.

> If a state's law enforcement officials exercise their functions in the territory of another state without the latter's consent, that state is entitled to protest and, in appropriate cases, to receive reparation from the offending state. If the unauthorized action includes abduction of a person, the state from which the person was abducted may demand return of the person, and international law requires that he be returned. If the state does not demand his return,

> under the prevailing view the abducting state may proceed to prosecute him under its laws.

Restatement (Third), § 432, comment c.

Foreign courts have held that when an individual is abducted by agents of one state from the territory of another state without the latter state's consent, there is no jurisdiction and the abducted person must be set free. In *In Re Jolis*, [1933-34] Ann. Dig. 191 (Tribunal Correctionnel d'Avesnes 1933), a Belgian subject was kidnapped by French officials in Belgium and forcibly taken to France for trial. An extradition treaty between the two countries was in effect at the time of the abduction. "[T]he Belgian Government lodged an official protest with the French Government . . . claiming *the return of* Jolis, who had been irregularly arrested on Belgian territory by foreign officers." *Id.* (emphasis added). The French court ordered the defendant's immediate release:

> The arrest, effected by French officers on foreign territory, could have no legal effect whatsoever, and was completely null and void. This nullity being of a public nature, the judge must take judicial notice thereof. The information leading to the proceedings of arrest . . . the proceedings themselves, the commitment to prison . . . and all that followed thereon must accordingly be annulled.

Id.

The same result was ordered in the *Colunje Claim*, [1933-34] Ann. Dig. 250 (United States-Panama Claims Commission 1934). In that case, a warrant was issued by the District Court of the Panama Canal Zone for the arrest of the defendant on the charge of using the postal service for fraudulent purposes. A Canal Zone policeman tricked the defendant into entering the Canal Zone from

Panamanian territory and there arrested him. The government of Panama protested the illegality of the arrest. As a result, the District Court of the Canal Zone "entered a *nolle prosequi* in the proceedings against Colunje, *who was forthwith released.*" *Id.* at 250 (emphasis added). The court held:

> It is evident that the police agent of the Zone by inducing Colunje by false pretenses to come with him to the Zone with the intent of arresting him there unduly exercised authority within the jurisdiction of the Republic of Panama to the prejudice of a Panamanian Citizen, who, as a result thereof, suffered the humiliation incident to a criminal proceeding.

Id. at 250-51. The court was thus without jurisdiction to prosecute the defendant.

The cases of *Jolis* and *Colunje* are significant because they contain both of the elements, also present in this case, that trigger the international law remedy of repatriation. First, the nation on whose territory the abduction was committed did not consent to or participate in the abduction so that it had no opportunity to exercise its sovereign duty to ensure that individual rights were protected as the prosecution proceeded. Second, the abduction was effected by an individual clothed with the authority of the state attempting to assert jurisdiction over the accused, thus making it appropriate to order the state to comply with the international law remedy and restore the *status quo ante*. Those two elements distinguish either non-state abductions (in which the receiving state has committed no wrong and thus cannot fairly be ordered to make restitution) or abductions with the consent of the state from whose territory the abduction

occurred (because the state is able to ensure its sovereign duty to protect individual rights).[10]

The cases of *Jolis* and *Colunje* are consistent with this Court's opinion in *Ker v. Illinois*, 119 U.S. 435 (1886). In *Ker*, there was no violation of Peru's territorial sovereignty because the abduction in *Ker* was "without any pretense of authority under the treaty or from the government of the United States." *Id.* at 443. Since the abductor had no authority from the United States government to kidnap or forcibly remove the individual from Peru, the abduction was a private act of the abductor, not a sovereign act of the United States in Peruvian territory. Consequently, there was no violation of international law. *Ker*, therefore, did not address the issue that this case presents, because in *Ker* the authority of the United States to abduct the defendant was not at issue.

B. The cases cited by the government in its opening brief support amicus' position that repatriation is the required remedy.

The government cites a string of cases in its attempt to establish that its kidnapping of Alvarez-Machain was not

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[10]Certain courts have gone beyond the rule of *Jolis* and *Colunje* and ordered the release of the defendant even though there was participation, and thus consent, by local authorities in the abduction. In the *Case of Nollet*, 18 Journal Du Droit International Prive 1188 (Court of Appeal of Dorial 1891), French authorities arrested a fugitive in Belgian territory. The fugitive was handed over to Belgian police who brought him to the French border and returned him to French authorities, apparently thinking he was a French citizen, when in fact he was a Belgian. The French court held that the defendant would not have been before the court if French authorities had not violated the Belgian border. The court ordered the defendant released.

forbidden under international law.[11] Those cases are in fact entirely consistent with the proposition that when the offended nation does not participate in or consent to another nation's abduction of an individual from the first nation's territory, the practice of states is to find the abduction invalid and require the offending nation to return the individual.[12] Thus, the cases cited by the government that uphold jurisdiction over a defendant who claimed to have been illegally abducted from another state are fundamentally different from this case.

In the case of *In Re Argoud*, 45 I.L.R. 90 (Court of Cassation 1964), the defendant argued that he was illegally detained in France because he had been the victim of a "criminal kidnapping in Munich, the city in which he was residing, and then transported by force to France, without the institution of any extradition proceedings against him." *Id.* at 92. At the time of the abduction an extradition treaty between Germany and France was in existence, but the rendition was not pursuant to the provisions of the treaty. The defendant demanded that he

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[11]The government cites the following cases to support the argument that a state can exercise jurisdiction over an individual illegally seized from another nation's territory: *Afouneh v. Attorney-General*, 4 Ann. Dig. 328 (Palestine S. Ct. 1942); *Attorney General v. Eichmann*, 36 I.L.R. 277 (S. Ct. Israel 1962); *Ex Parte Elliott*, 1 All E.R. 373 (K.B. 1949); *In Re Karoly*, 4 Ann. Dig. 345 (Hungarian Minister of Justice 1928); *In Re Argoud*, 45 I.L.R. 90 (Court of Cassation 1964); *R. v. Lopez and Sattler*, 1 Dearsly & Bell's Crown Cases 525 (1858); *Ex Parte Scott*, 9 B. & C. 446 (1829); *The Casablanca Case* (May 22, 1900), *reprinted in* Hague Ct. Rep. 110 (Scott ed. 1916); and *The Savarkar Case* (Feb. 24, 1911), *reprinted in* Hague Ct. Rep. 275 (Scott ed. 1916).

[12]*See* 4 J. Moore, *A Digest of International Law* § 603, at 329 (1906); Preuss, *Kidnapping of Fugitives from Justice on Foreign Territory*, 29 Am. J. Int'l L. 502 (1935).

be released and taken back to Germany. The court held that the defendant was not entitled to the remedy of repatriation.

In Re Argoud is distinguishable from this case because the report contains no indication that France, or any other nation, sponsored or authorized the abduction. According to the defendant, he had been abducted by "some unidentified persons." *Id.* The French police were alerted to his presence in France "by an anonymous phone call." *Id.* In addition, there was no evidence presented at the defendant's trial that the German government protested the abduction or demanded his return.

The same can be said for the case of *Ex Parte Elliott*, 1 All E.R. 373 (K.B. 1949). The defendant in that case was a deserter from the Royal Army Service Corps. He had evaded arrest for several years before he was arrested in Belgium by British and Belgian police officers and brought back to England to stand trial. The Belgian government did not protest the abduction. Indeed, Belgian police officers participated in the arrest.

Similar facts are found in the case *In Re Karoly*, 4 Ann. Dig. 345. In that case, the accused left Budapest for Egypt. The Hungarian government lodged a request for extradition with the Egyptian government, but before formal extradition procedures had begun, "the Egyptian police, acting at the request of the Hungarian consul, brought the accused from Alexandria to Trieste."[13]

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[13] *See also Delivery Without Extradition (Germany) Case*, [1919-22] Ann. Dig. 262 (Germany, Reichsgericht 1922) (fugitive in Dutch territory brought by Dutch authorities over the frontier and handed over to German authorities); *The King v. Corrigan*, [1931-32] Ann. Dig. 319 (Court of Criminal Appeal 1930) (fugitive brought from Paris by French police handed over to English police and brought to England for trial); *Katz v. Officer Commanding the Polish Military*

Unlike this case, in both *Ex Parte Elliott* and *In Re Karoly*, the abducting state was attempting to bring one of its own nationals back for trial. Further, the authorities of the state where the person being sought was located participated in the arrest, thus implicitly consenting to it. Additionally, in neither case did the state of refuge protest the arrest and removal of the individual from its jurisdiction.

The decision in *The Savarkar Case* (Feb. 24, 1911), *reprinted in* Hague Ct. Rep. 275 (Scott ed. 1916), also depended crucially on the fact that the state where the person being sought was located knowingly participated in the arrest. In *Savarkar*, a prisoner was being transported to India to stand trial. While in France, he escaped, was recaptured by French authorities and was handed over to British authorities. Subsequently, the French government demanded that the prisoner be returned to France. The Permanent Court of Arbitration held that no legal ground existed for the return of the prisoner because French authorities had participated in the initial seizure of the individual from French territory. Since France had implicitly consented to the abduction by its participation, there was no violation of France's territorial sovereignty and the remedy of repatriation was not appropriate.

In *Afouneh v. Attorney-General*, 4 Ann. Dig. 328 (Palestine S. Ct. 1942), the state in which the accused was located expressly consented to the abduction. The accused, a Palestinian, was wanted for murder in Palestine. British police arrested him in Syria and brought him

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Prison, Jerusalem, [1943-45] Ann. Dig. 165 (Palestine, Supreme Court, sitting as a High Court of Justice 1944) (defendant arrested by the Civil Police of the Palestine Government in Palestine and handed over to the Military Police of the Polish Army).

within Palestinian jurisdiction. An extradition treaty between the two territories was in place, but the arrest was effectuated before the extradition request could be processed. Syria did not protest the abduction. Subsequent to the seizure, Syria returned the extradition papers with respect to the accused thereby giving its express consent to Palestinian jurisdiction over him. *Id.* at 327. Since the government from whose territory the accused was abducted consented to the abduction, the court had jurisdiction to prosecute.

Ex Parte Scott, 9 B. & C. 446 (1829), a case that superficially resembles that before this Court, is also distinguishable. In *Scott*, the fugitive was arrested in Belgian territory by a British police officer and brought against her will to England where she was tried. She argued that the English court lacked jurisdiction to try her because of the improper manner in which she had been brought into the jurisdiction. The court disagreed, holding that it would not look into the circumstances of her arrest.

The court's opinion is silent as to whether the Belgian government participated in, consented to or protested the abduction.[14] Moreover, "[n]owhere in the judgment is the question considered of the effect of a breach of international as distinct from municipal law upon the jurisdiction of the court."[15] The court in *Ex Parte Scott* simply did not address the issue of its jurisdiction in terms of international law.

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[14]*See* O'Higgins, *Unlawful Seizure and Irregular Extradition*, 1960 Brit. Y.B. Int'l L. 279, 282; Morgenstern, *Jurisdiction in Seizures Effected in Violation of International Law*, 1952 Brit. Y.B. Int'l L. 265, 273.

[15]O'Higgins, 1960 Brit. Y.B. Int'l L. at 282.

The two cases of *R. v. Lopez and Sattler*, 1 Dearsly & Bell's Crown Cases 525, also provide no support for the government's argument. The issue in those cases was whether English courts had jurisdiction over individuals who committed crimes aboard an English ship on the high seas. In both cases, the court found jurisdiction based upon the rule that an English ship is "part of the territory of England." *Id.* at 547. Since the individuals were entitled to "protection of the English law" while aboard the ship, they "owed obedience to that law."[16] *Id.*

In *Attorney General v. Eichmann*, 36 I.L.R. 18 (Dist. Ct. Israel 1961) *aff'd* 36 I.L.R. 277 (Sup. Ct. Israel 1962), Israeli agents abducted Eichmann from Argentina. Argentina initially protested the abduction. But before Eichmann was brought before the Israeli court, Argentina withdrew its protest. Consequently, when Eichmann objected to the Israeli court's jurisdiction on the grounds that his abduction by Israeli agents violated Argentine sovereignty, the court held that jurisdiction was not barred because Argentina had withdrawn its protest. *Id.* at 70-71. As the Ninth Circuit stated in *United States v. Verdugo-Urquidez*, 939 F.2d 1341, 1361-62 n.23 (9th Cir. 1991), "the exercise of jurisdiction over Eichmann was proper because at the time the court conducted its proceedings there was no longer any outstanding protest of any kind by the Argentine government. Although Argen-

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[16]In the *Sattler* case, the accused was arrested by the London police in Germany "with the assistance of the Hamburgh police" and brought against his will on board the English ship in order that he might be tried in London for the crime of larceny. On board the ship he committed murder, the crime for which he was convicted. The issue was whether the court had jurisdiction to try the defendant for murder, not for larceny. Thus, even though German authorities assisted in the arrest, which supports Respondent's argument, the case is inapposite to the issues presented in this case.

tina originally demanded Eichmann's return, it subsequently withdrew the entire protest. Israel and Argentina issued a joint communique stating that they had decided to regard the entire incident closed."

Foreign cases, as shown above, do not support the position that a court has jurisdiction over an individual who has been abducted from another state, when that state protests the abduction. On the contrary, they lend support to the proposition that the appropriate remedy for abductions in the circumstances such as those presented in this case is to return the accused to the country from which he was abducted.

CONCLUSION

Because the United States government abducted Respondent Dr. Humberto Alvarez-Machain without Mexico's consent and because it precluded Mexico from exercising its sovereign duty to protect the rights of its people, as well as its treaty-based right to determine whether to extradite or try one of its nationals, United States courts lack jurisdiction over Alvarez-Machain. Therefore, he must be returned to Mexico.

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Respectfully submitted,

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